

**SUMMARY REPORT OF INVESTIGATION**  
**Office of Inspector General Case # 15-0564**  
**(Sergeant Daniel Gallagher)**  
**July 29, 2016**

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This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

**I. INTRODUCTION**

An OIG investigation has established that Daniel Gallagher, a Sergeant with the Chicago Police Department (CPD) who supervised the investigation in the aftermath of the October 20, 2014 shooting of Laquan McDonald by CPD Officer Jason Van Dyke, violated CPD Rules and Regulations during that investigation. As of October 20, 2014, Gallagher was assigned to CPD's Detective Division. As detailed further below, Gallagher made false statements and misleading characterizations in CPD reports related to the shooting, which served to exaggerate the threat McDonald posed. Further, in his failure to ensure that the investigation under his supervision was conducted in a truthful, complete, and objective manner, Gallagher impeded CPD's efforts to achieve its policy and goals, failed to promote CPD's efforts to implement its policy and accomplish its goals, and brought discredit upon CPD. In so doing, Gallagher was incompetent in the performance of his duty. Accordingly, OIG recommends that CPD discharge Gallagher and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

**II. APPLICABLE RULES, REGULATIONS, AND LAW**

**A. CPD Rules and Regulations**

The "Rules and Regulations of the Chicago Police Department" set out the standards of conduct and duties of sworn members, including supervisory members, as well as CPD goals. The Rules and Regulations state that sworn members must "conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement." Supervisory members "have the responsibility for the performance of all subordinates placed under them" and they "[r]emain accountable for the failure, misconduct or omission by their subordinates."

Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

<b>Rule 2</b>	Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
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**Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

**Rule 11** Incompetency or inefficiency in the performance of duty.

**Rule 14** Making a false report, written or oral.

### **III. SERGEANT GALLAGHER'S EMPLOYMENT HISTORY**

Gallagher joined CPD in October of 2000 as a police officer. He became a Detective in 2006 and was promoted to Sergeant in 2009. On October 20, 2014, he was a Sergeant in the Detective Division assigned to Area Central, a position he has held from 2012 through the present. Gallagher is a member of the Policeman's Benevolent & Protective Association of Illinois, Unit 156-Sergeants (Unit 156-Sergeants). Detective David March, the primary detective assigned to the McDonald shooting, was under Gallagher's command.

### **IV. SUMMARY OF INVESTIGATION**

#### **A. Procedural History of OIG's Investigation**

By letter, dated December 8, 2015, Independent Police Review Authority (IPRA) Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation "to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke's shooting of McDonald] and/or during the investigation of the incident."<sup>1</sup> IPRA further requested that OIG investigate "whether any of the involved Chicago Police officers committed any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers' conduct may have interfered with or obstructed the appropriate investigation and handling of this matter."

Then, by letter, dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an "administrative investigation into any and all allegations of police officer misconduct" arising out of the October 20, 2014 shooting death of McDonald. The Superintendent's request asked OIG to investigate the following allegations: "whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter." Escalante attached to the letter request a copy of Sergeant Sandra Soria's Initiation Report, which raises allegations of

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<sup>1</sup> On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG's administrative investigation.

On March 10, 2016, Kevin Kilmer, Financial Secretary for the FOP, on behalf of all affected members, filed a grievance with CPD stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.<sup>2</sup> On March 16, 2016, FOP on behalf of all impacted CPD officers filed a "Complaint for Injunction in Aid of Arbitration" in the Circuit Court of Cook County, asking the court to enjoin OIG from conducting interviews until the grievance was decided in arbitration.<sup>3</sup> The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG's administrative investigation of other CPD employees' actions related to the McDonald shooting is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of several CPD personnel who were at or responded to the scene of the shooting and civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel.

## B. The Events of October 20, 2014

The following sections detail the shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.<sup>4</sup>

### 1. [REDACTED] and Rudy Barillas's Encounter with McDonald<sup>5</sup>

[REDACTED] and [REDACTED] Rudy Barillas, were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, whom she subsequently identified as McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who

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<sup>2</sup> Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

<sup>3</sup> *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

<sup>4</sup> On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

<sup>5</sup> The following account of [REDACTED] and Barillas's encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014, respectively. OIG 15-0564 003077.

had already called 911, then threw his cell phone at McDonald.<sup>6</sup> McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

## 2. Officers Thomas Gaffney and Joseph McElligott's Encounter with McDonald<sup>7</sup>

Officer Thomas Gaffney and his partner Officer Joseph McElligott received a call over the radio that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.<sup>8</sup> Gaffney was driving, and McElligott was in the passenger seat of their assigned vehicle, 815R.<sup>9</sup> When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck, and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife.

<sup>6</sup> OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding “a guy right hear [sic] that stolen [sic] the radios” from trucks in a truck yard located at “41st and Kildare.” OIG 15-0564 003227.

<sup>7</sup> The following account of Gaffney and McElligott’s encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014, OIG 15-0564 000482-98, 000610-30; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 003067-69.

<sup>8</sup> OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

<sup>9</sup> Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

Beat #	Vehicle #	Officers
845R	6412	Officer Joseph Walsh (driver), Officer Van Dyke (passenger)
815R	8489	Officer Gaffney (driver), Officer McElligott (passenger and on foot)
813R	8779	Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger)
822R	8765	Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)
841R	8948	Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger)

McDonald started walking east again, going from the sidewalk to the street and back. McElligott followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.<sup>10</sup> Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.<sup>11</sup>

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R’s right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R’s windshield once with the knife in his right hand. The windshield did not break but, according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran eastbound through a parking lot of a Burger King located at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald’s movements as he reached Pulaski.

### 3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R (the vehicle in which Mondragon was the driver), 823R, and 845R, video from the “WNE fire exit” security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin’ Donuts, located at 4113 South Pulaski Road (the DD Camera).<sup>12</sup>

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<sup>10</sup> OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; see also OIG 15-0564 003691, 3228.

<sup>11</sup> OIG 15-0564 000620.

<sup>12</sup> In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 815R and 821R. These videos did not contain footage relevant to this report.

Time	Event(s) Captured	Source of Video
9:53:17 – 9:54:42	McDonald walks eastbound on the south side sidewalk of 40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with McDonald; an officer on foot trails directly behind McDonald by the length of the SUV, with his flashlight trained on McDonald. <sup>13</sup>	Greater Chicago Food Depository Security Camera
9:56:53 – 9:57:01	813R and 845R turn left onto 40th Street from Pulaski.	813R Dashcam
9:57:01– 9:57:09	An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R); 845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).	813R Dashcam; 845R Dashcam
9:57:09 – 9:57:20	845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).	813R Dashcam; 845R Dashcam
9:57:20 – 9:57:25	845R, which is facing east/southeast on Pulaski just north of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822R, which is stopped in the middle of Pulaski facing north.	813R Dashcam
9:57:25 – 9:57:28	McDonald slows as he approaches 822R, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R and with 822R situated between McDonald and the officers, McDonald extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822R and comes to a stop on the east side of Pulaski, facing south and almost directly	813R Dashcam

<sup>13</sup> OIG confirmed the vehicle is 815R and the officer on foot is McElligott by comparing the video with photographs of the officers. OIG 15-0564 003356.

	south of 822R; Van Dyke opens 845R's passenger door.	
9:57:28 – 9:57:30	McDonald changes course and begins walking southwest on Pulaski, away from 822R and 845R (813R); Van Dyke exits the passenger side of 845R with both of his feet in Pulaski's northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski's northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).	813R Dashcam; DD Camera <sup>14</sup>
9:57:30 – 9:57:33	McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski's northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski's yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822R drives north on Pulaski, away from 845R (813R).	813R Dashcam; DD Camera
9:57:33 – 9:57:36	As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left, and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski's northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski's median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is	813R Dashcam; DD Camera

<sup>14</sup> The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R's video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

	then apparently shot and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera).	
9:57:36 – 9:57:54	McDonald spins between 180 and 270 degrees in a clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski; his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald. Other than those steps, Van Dyke's feet are stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). <sup>15</sup>	813R Dashcam; DD Camera
9:57:54 – 9:58:05	An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.	813R Dashcam
9:58:05- 9:58:20	McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the west side of Pulaski, and stops just south of where McDonald is lying.	813R Dashcam; 823R Dashcam
9:58:20- 9:58:57	Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.	813R Dashcam; <sup>16</sup> 823R Dashcam
9:58:57- 9:59:02	823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. <sup>17</sup> McDonald is no longer visible in the video frame.	823R Dashcam

<sup>15</sup> OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

<sup>16</sup> The last time stamp visible on the 813R dashcam video is 9:58:55.

<sup>17</sup> OIG identified the CCSPD officer as Officer Adam Murphy.

#### 4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting<sup>18</sup>

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

I see there's blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route. Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.<sup>19</sup> It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That's why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] to call your union rep, call your union rep.” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

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<sup>18</sup> The following CCSPD Officer accounts are taken from OIG's June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

<sup>19</sup> The Medical Examiner's Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

### C. Sergeant Gallagher's Reports Regarding the McDonald Shooting

1. March 16, 2016 Case Supplementary Report, "Sup ID" 10992767  
CASR301<sup>20</sup>

On March 15, 2015, Detective March submitted a case supplementary report under the R.D. Number HX475653 with "Sup ID" 10992767 CASR301 (the 301 CSR).<sup>21</sup> The report is titled as a "Field Investigation Exc. Cleared Closed (Other Exceptional) Report." It lists the original and last "Offense Classification" as "Assault/Aggravated Po: Knife/Cut Instr.," the "Date of Occurrence" as October 20, 2014, at 9:57 p.m., and the "Address of Occurrence" as 4112 S. Pulaski Rd. Further, it lists Van Dyke, Walsh, Gaffney, and McElligott as the victims, McDonald as the offender, March as the reporting officer and primary detective assigned, and Lieutenant Anthony Wojcik as the approving supervisor. It is signed as the "report of" March, Gallagher, and Wojcik of the "Bureau of Detectives – Area Central. Wojcik approved the CSR on March 16, 2015.

According to March, he, Gallagher, and Wojcik worked together on the report in the days before it was submitted and approved. The three had several in-person meetings to discuss the preparation of the report.<sup>22</sup> In his OIG interview, March stated that he, Gallagher, and Wojcik discussed specific details of the report, including the conclusion that witness accounts of the McDonald shooting were consistent with video footage capturing the events. In OIG's interview of Commander Eugene Roy,<sup>23</sup> Roy explained that the fact that the CSR is signed as the "report of" March, Gallagher, and Wojcik "would mean that they all worked on the report." Roy 7/6/2016 OIG Tr. 192:9-11.

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<sup>20</sup> OIG 15-0564 003057-79. CPD's investigation in the aftermath of the McDonald shooting was reported under record number HX-475653, and most reports were classified as an investigation into an aggravated assault in which McDonald was the offender. In a few reports, the case was classified as an investigation into a justifiable homicide of which McDonald was the victim. An additional record number was also created and classified as a justifiable homicide. In CPD's investigative reports, CPD personnel drew conclusions about the propriety and lawfulness of Van Dyke's shooting of McDonald. This was in violation of CPD Detective Division Special Order (DDSO) 15-22, which requires that, in reporting on an incident which has been classified as a justifiable homicide, detectives "will not state that the use of deadly force was justified." DDSO 15-22 took effect on January 1, 2015, and, according to materials OIG received from CPD, would have been in effect when the relevant reports in this case were drafted and issued. See OIG 15-0564 009012.

<sup>21</sup> Also on March 15, 2015, March submitted a second CSR with Sup ID 10988891 CSR339. OIG 15-0564 003034-56. This report contains no narrative, but includes, among other information, an inventory of the evidence recovered and an identification of the personnel assigned to the case and the witnesses to the relevant events. According to March, he would have submitted the two CSRs as one report, but it would have been too large for CPD's system. Therefore, March had to break the report into two CSRs. March 4/27/2016 OIG Tr. 94:14-95:21.

<sup>22</sup> See March 4/26/2016 OIG Tr. 260-61.

<sup>23</sup> As of October 20, 2014, Roy was Commander of CPD's Area Central Detective Division.

The CSR contains, among other information, summaries of the interviews March conducted of the officers who were present when Van Dyke shot McDonald, as well as summaries of the interviews CPD detectives conducted of civilian witnesses to the events of October 20, 2014.

a) *Officer Statement Summaries*

(1) Van Dyke

The 301 CSR includes a summary of the statements that Van Dyke provided to March on October 20, 2014, and October 21, 2014, respectively. The following is an excerpt of Van Dyke's October 20, 2014 statement:

Officer Van Dyke exited the vehicle on the right side and drew his handgun. As Van Dyke stood in the street on Pulaski, facing northbound, toward McDonald, McDonald approached southbound. McDonald was holding the knife in his right hand, in an underhand grip, with the blade pointed forward. He was swinging the knife in an aggressive, exaggerated manner. Van Dyke ordered McDonald to "Drop the knife!" multiple times. McDonald ignored Van Dyke's verbal direction to drop the knife and continued to advance toward Van Dyke.

When McDonald got to within 10 to 15 feet of Officer Van Dyke, McDonald looked toward Van Dyke. McDonald raised the knife across his chest and over his shoulder, pointing the knife at Van Dyke. Van Dyke believed McDonald was attacking Van Dyke with the knife, and attempting to kill Van Dyke. In defense of his life, Van Dyke backpedaled and fired his handgun at McDonald, to stop the attack. McDonald fell to the ground but continued to move and continued to grasp the knife, refusing to let go of it. Van Dyke continued to fire his weapon at McDonald as McDonald was on the ground, as McDonald appeared to be attempting to get up, all the while continuing to point the knife at Van Dyke. The slide on Van Dyke's pistol locked in the rearward position, indicating the weapon was empty. Van Dyke performed a tactical reload of his pistol with a new magazine and then assessed the situation.

McDonald was no longer moving and the threat had been mitigated, so Officer Van Dyke and Officer Walsh approached McDonald. McDonald was still holding the knife in his right hand. Van Dyke continued to order McDonald to "Drop the knife!" Officer Walsh told Van Dyke, "I have this." Van Dyke then used his handgun to cover Walsh as Walsh walked up and forcibly kicked the knife out of McDonald's right hand, thereby eliminating the threat to the officers.<sup>24</sup>

The 301 CSR summarized Van Dyke's October 21, 2014 statement in relevant part as follows:

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<sup>24</sup> March completed a General Progress Report (GPR) relating to his October 20, 2014 interview of Van Dyke that contains March's handwritten notes of the interview. OIG 15-0564 003239-41. March's handwritten notes of the interview do not differ in any significant way from the summary of Van Dyke's statement in the CSR.

[Van Dyke] related the same sequence of events as documented in his original interview at the scene of the incident.<sup>25</sup>

Van Dyke additionally articulated the reasoning behind his decision to use deadly force against the offender in this incident, Laquan McDonald. Van Dyke was aware of the radio transmissions from Officer Thomas Gaffney, on Beat 815R, that McDonald was armed with a knife. Van Dyke was aware that McDonald had attacked the officers on Beat 815R by slashing the tire of their police vehicle.

As he confronted McDonald at 4112 South Pulaski Road, Van Dyke saw that McDonald was in fact, armed with a knife, a deadly weapon. Van Dyke was aware of the widely accepted teaching in law enforcement that an assailant armed with a knife was considered a deadly threat, if within 21 feet, because it was possible for such an assailant to close that distance and attack with the knife before a defensive shot could be fired from a handgun. Van Dyke was also aware of the existence of throwing knives, which can be thrown from a distance, as well as spring loaded knifes, which propel a blade through the air from the knife handle. Van Dyke also said he recalled a previously issued Chicago Police Department bulletin warning of a weapon which appeared to be a knife but which actually was capable of firing a bullet, making it a firearm.<sup>26</sup>

(2) Walsh

The following is an excerpt of Walsh's October 20, 2014 statement<sup>27</sup>:

As Laquan McDonald ran eastbound through the Burger King parking lot, Walsh used the police vehicle he was driving to block McDonald from entering the restaurant.

As McDonald ran southbound on Pulaski Road, from the Burger King, Walsh pursued McDonald in the police vehicle. Walsh drove southbound in the northbound lanes to get ahead of McDonald, keeping the police vehicle between McDonald and a Dunkin' Donuts restaurant, on the east side of Pulaski. As their vehicle passed McDonald, Officer Van Dyke opened the right front door of their

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<sup>25</sup> March's GPR relating to his October 21, 2014 interview of Van Dyke stated: "Same details." The rest of March's handwritten notes of the interview do not differ in any significant way from the summary of Van Dyke's statement in the CSR. OIG 15-0564 003254.

<sup>26</sup> The CSR notes that a search was subsequently conducted for the bulletin Van Dyke referenced and that an "Officer Safety Alert number 2012-OSA0297," issued on December 4, 2012, was located. See OIG 15-0564 003074. March wrote that "[i]t was a warning regarding a 'revolver knife' which was capable of firing .22 caliber cartridges."

<sup>27</sup> The first paragraph of the Walsh statement summary states: "Walsh related the same facts as his partner, Officer Jason Van Dyke."

vehicle, to exit the truck and confront McDonald. Walsh, realizing that at this point they were too close to the armed McDonald to safely exit the vehicle, told Van Dyke to wait until they got further ahead of McDonald. Walsh drove further south on Pulaski. He stopped his vehicle south of McDonald and exited the driver's door as Van Dyke exited the right side of the vehicle. Walsh drew his handgun when he exited the vehicle.

Officer Walsh came around the rear of the police vehicle and joined Officer Van Dyke on the right side of the vehicle. Walsh also stood in the street on Pulaski, facing northbound, as McDonald walked southbound toward the officers. Walsh ordered McDonald to "Drop the knife!" multiple times as McDonald approached the officers.

Officer Walsh also backed up, attempting to maintain a safe distance between himself and McDonald. McDonald ignored the verbal direction given by both Walsh and Officer Van Dyke, and continued to advance toward the officers. When McDonald got to within 12 to 15 feet of the officers he swung the knife toward the officers in an aggressive manner. Van Dyke opened fire with his handgun and McDonald fell to the ground. Van Dyke continued firing his weapon at McDonald as McDonald continued moving on the ground, attempting to get up, while still armed with the knife.

When the gunfire stopped and McDonald was not moving anymore, Walsh approached McDonald with Van Dyke. Walsh continued to order McDonald to "Drop the knife!" multiple times, as McDonald was still holding the knife in his right hand. Walsh forcibly kicked the knife out of McDonald's hand and then notified the dispatcher on the police radio that shots had been fired by the police. An ambulance was also requested for McDonald.

As they waited for the ambulance to respond to the scene, Officer Walsh told McDonald to 'hang in there,' and that an ambulance was on the way.

Officer Walsh said he believed McDonald was attacking Walsh and Officer Van Dyke with the knife and attempting to kill them when the shots were fired. Walsh stated he did not fire his handgun because Van Dyke was in the line of fire between Walsh and McDonald. Walsh thought Van Dyke fired eight or nine shots total.<sup>28</sup>

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<sup>28</sup> Detective March completed a GPR relating to his interview of Walsh that contains March's handwritten notes of the interview. OIG 15-0564 003242-43. March's handwritten notes of the interview do not differ in any significant way from the summary of Walsh's statement in the CSR.

## (3) Fontaine

The 301 CSR includes a summary of Fontaine's October 20, 2014 statement in relevant part as follows:

Fontaine was working with Police Officer Ricardo Viramontes. The two officers were assigned to a marked vehicle. Viramontes was driving the vehicle and Fontaine was the passenger.

The two officers responded to the request for assistance made by Beat 815R, regarding a man with a knife at 41st Street and Pulaski Road. Officer Viramontes drove northbound on Pulaski. When they arrived at the scene of this incident, in front of the Dunkin' Donuts restaurant, Officer Fontaine saw a black male subject, now known as Laquan McDonald, walking southbound in the street, with a knife in his right hand. McDonald was walking sideways, with his body facing east, toward Officers Jason Van Dyke and Joseph Walsh. These two officers were standing in the middle of the street, on the right side of their police vehicle, which was facing southbound. Fontaine heard the officers repeatedly order McDonald to "Drop the knife!" McDonald ignored the verbal direction and instead, raised his right arm toward Officer Van Dyke, as if attacking Van Dyke. At this time Van Dyke fired multiple shots from his handgun, until McDonald fell to the ground and stopped moving his right arm and hand, which still grasped the knife. The gunshots were rapid fire, without pause. Officer Walsh then kicked the knife out of McDonald's hand.<sup>29</sup>

## (4) Viramontes

The 301 CSR includes a summary of Viramontes's October 20, 2014 statement in relevant part as follows:

[W]hen [Viramontes] exited his police vehicle, at the scene, he observed a black male subject, now known as Laquan McDonald, walking southbound on Pulaski Road, in the middle of the street, holding a knife in his right hand. Viramontes heard Officer Jason Van Dyke repeatedly order McDonald to "Drop the Knife!" McDonald ignored the verbal direction and turned toward Van Dyke and his partner, Officer Joseph Walsh. At this time Van Dyke fired multiple shots from his handgun. McDonald fell to the ground but continued to move, attempting to get back up, with the knife still in his hand. Van Dyke fired his weapon at McDonald continuously, until McDonald was no longer moving.<sup>30</sup>

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<sup>29</sup> Detective March completed a GPR relating to his interview of Fontaine that contains March's handwritten notes of the interview. OIG 15-0564 003252. March's handwritten notes of the interview do not differ in any significant way from the summary of Fontaine's statement in the CSR.

<sup>30</sup> Detective March completed a GPR relating to his interview of Viramontes that contains March's handwritten notes of the interview. OIG 15-0564 003253. March's handwritten notes of the interview do not differ in any significant way from the summary of Viramontes's statement in the CSR.

## (5) Sebastian

The following is an excerpt of the 301 CSR summary of Sebastian's October 20, 2014 statement:

Officer Sebastian observed a black male subject, now known as Laquan McDonald, running southeast bound through the parking lot of the Burger King restaurant. Beat 845R pursued McDonald in their police vehicle, through the parking lot, toward Pulaski. Sebastian told Officer Mondragon to drive back out onto Pulaski to assist in the pursuit. McDonald ran out onto Pulaski and continued to run southbound down the middle of the street. Beat 845R pursued McDonald in their vehicle, southbound on Pulaski, followed by Beat 813R. As McDonald ran southbound on Pulaski, Sebastian saw the knife in his right hand. McDonald was waving the knife.

Beat 845R stopped their vehicle ahead of McDonald, between McDonald and the Dunkin' Donuts restaurant on the east side of Pulaski. Officers Joseph Walsh and Jason Van Dyke exited their vehicle and drew their handguns. McDonald turned toward the two officers and continued to wave the knife. Sebastian heard the officers repeatedly order McDonald to "Drop the knife!" McDonald ignored the verbal directions and continued to advance on the officers, waving the knife. Officer Sebastian heard multiple gunshots and McDonald fell to the ground, where he continued to move. Sebastian did not know who fired the shots, which were fired in one continuous group. She then saw Officer Walsh kick the knife out of McDonald's hand.<sup>31</sup>

## (6) Mondragon

The 301 CSR includes a summary Mondragon's October 20, 2014 statement in relevant part as follows:

[Mondragon] stated she was a Chicago Police Officer assigned to the 008th District. Mondragon related the same facts as her partner, Officer Daphne Sebastian.

Officer Mondragon added that as she drove westbound on 40th Street, she saw Officer McElligott running eastbound through the Burger King parking lot. She made a U-Turn and drove back out onto Pulaski Road. Mondragon turned southbound onto Pulaski. She saw Laquan McDonald running southbound on Pulaski, in the middle of the street. As she got closer she could see McDonald was holding a knife in his right hand. He was waving the knife.

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<sup>31</sup> Detective March completed a GPR relating to his interview of Sebastian that contains March's handwritten notes of the interview. OIG 15-0564 003248. March's handwritten notes of the interview do not differ in any significant way from the summary of Sebastian's statement in the CSR.

Officer Mondragon saw Officers Joseph Walsh and Jason Van Dyke outside of their police vehicle. She heard the officers repeatedly ordering McDonald to “Drop the knife!” as McDonald got closer and closer to the officers, continuing to wave the knife. As she was placing her vehicle transmission into Park, Mondragon looked down and heard multiple, continuous gunshots, without pause. Mondragon then saw McDonald fall to the ground. Mondragon did not know who fired the shots.<sup>32</sup>

*b) The CSR Findings and Conclusions*

The CSR includes several findings and conclusions regarding the shooting. Specifically, it states that “[t]he recovered in-car camera video from Beats 845R and 813R was viewed and found to be consistent with the accounts of all of the witnesses.” OIG 15-0564 003075. It further states:

The above to-date investigation determined that Laquan McDonald was an active assailant who, while armed with a dangerous weapon, used force likely to cause death or serious injury to a private citizen when he attacked Rudy Barillas; threatened the imminent use of force likely to cause death or serious injury when he incised the tire and stabbed the windshield of a Chicago Police Department vehicle occupied by Officer Thomas Gaffney; and initiated imminent use of force likely to cause death or serious injury when he initiated an attack on Officers Jason Van Dyke and Joseph Walsh. The above investigation concluded that Officer Jason Van Dyke’s use of deadly force, the discharging of his duty firearm, was within the bounds of the Chicago Police Department’s use of force guidelines, and in conformity with local ordinances and state law.

OIG 15-0564 003078.

2. Major Incident Notification Detail<sup>33</sup>

Gallagher completed a Major Incident Notification Detail (MIN) regarding the McDonald shooting. The MIN is reported under RD #HX475653 and is dated October 21, 2014 at 4:05 a.m. It lists the “Crime/Incident” at issue as an aggravated assault on a police officer with a “Knife/Cut Insr.” The MIN names three victims and one offender; the victims are identified as Gaffney, Walsh, and Van Dyke, and the offender as McDonald. Gallagher is identified as the person making the notification, and March as the assigned detective. The narrative portion of the report reads:

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<sup>32</sup> Detective March completed a GPR relating to his interview of Mondragon that contains March’s handwritten notes of the interview. OIG 15-0564 003249. March’s handwritten notes of the interview do not differ in any significant way from the summary of Mondragon’s statement in the CSR.

<sup>33</sup> OIG 15-0564 003009-10.

Beat 815R responded to an OEMC call of a holding an offender who was breaking into trailers at 4100 S. Kildare. Beat 815R arrived on scene and spoke to the complainant who pointed to the offender who had fled on foot. Beat 815R pursued the offender in their marked vehicle to 4000 S. Karlov, at which time the offender who was acting irrational and was armed with a knife, punctured their front passenger tire, and then struck the windshield with his knife. Beat 815R requested a taser and additional units to respond and assist with the apprehension of the offender. Beat 845R responded to 4112 S. Pulaski and observed the offender still armed with a knife walking in traffic. Beat 845R exited their vehicle and ordered the offender to drop his knife. The offender refused all verbal commands and continued to approach the officers while still armed with his knife. Beat 845R fearing for his life discharged his weapon. The offender sustained numerous gun shot [sic] wounds and was transported to Mt. Sinai Hospital where he was subsequently pronounced at 2242 hours.

#### D. OIG's Interview of Sergeant Gallagher

On May 18, 2016, pursuant to Section 6.1 of the CBA between CPD and Unit 156-Sergeants, OIG, through CPD's Bureau of Internal Affairs, served Gallagher with a Notification of Interview, Notification of Allegations, and copies of several documents, including: (1) the March 16, 2015 CSR for R.D. #HX-475653 with the "Sup ID" of 10992767 CASR301; (2) the March 16, 2015 CSR for R.D. #HX-475653 with the "Sup ID" of 10988891 CASR339; and (3) a Major Incident Notification Detail for Incident Number 73204. In addition, OIG provided Gallagher with the dashcam footage from 813R and 845R and the security camera footage from Dunkin' Donuts.

On June 8, 2016, OIG investigators interviewed Gallagher under oath after informing him of his administrative advisements orally and in writing. He provided oral and written acknowledgment of the reading of those advisements. The interview was transcribed by a certified court reporter. Gallagher's attorney, Thomas Needham, was also present for the interview. In summary, Gallagher stated as follows.

After he was served with OIG's Notification of Allegations and in preparation for the interview, Gallagher spoke with Wojcik<sup>34</sup> and Lieutenant Osvaldo Valdez in order to ensure "that nobody up the chain ever claimed that this was an unjustified shooting or ever had any issues with this particular investigation . . ." Gallagher OIG Tr. 27:16-20.

##### 1. The Scene of the Shooting

On October 20, 2014, Gallagher was working as the Sergeant of an Area Central Detective Division's homicide team. He received a phone call saying that there had been a police-involved shooting at 4100 S. Pulaski. He assigned the case to March and responded to the scene. As of

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<sup>34</sup> Wojcik retired from CPD effective May 16, 2016.

that date, Gallagher had participated in the investigation of between 25 and 35 police-involved shootings.

Once he arrived at the scene of the McDonald shooting, Gallagher assigned a variety of tasks to the detectives under his supervision. March was assigned as the lead investigator to investigate the incident as a police-involved shooting. Gallagher did not personally speak with any of the officers who had been on the scene at the time of the shooting, but March provided him updates regarding the officers' statements. While at the scene, he did see video footage of the shooting from the 813R dashcam. He had several conversations with other CPD supervisors who were at the scene, including Wojcik, Valdez, Sergeant Shawn McGavock, and Roy. Gallagher's conversations with Roy consisted of his providing Roy with updates as new information was gathered. Representatives from IPRA were on the scene, and Gallagher believed that they saw video of the shooting. FOP representatives were on the scene as well.

## 2. Area Central

Sometime after midnight, Gallagher left the scene of the shooting and went to Area Central. When he arrived, officers were participating in interviews with IPRA. While at Area Central, Gallagher again saw video of the shooting from 813R's dashcam; he believed it was possible that Deputy Chief David McNaughton was present when he watched the video.<sup>35</sup> Gallagher did not speak with anyone about the video. At some point, Gallagher also saw video footage from the Dunkin' Donuts security camera.

Gallagher sat in on a portion of an interview that March conducted of Van Dyke. At the beginning of that interview, Van Dyke began recounting the events surrounding his arrival at the scene of the shooting. Gallagher was then called away and returned sometime later. When he returned, Van Dyke was "discussing the 21-foot rule, his knowledge of different types of knives, the throwing knives and ballistic knives, and then he mentioned the Officer Safety Bulletin that he was aware of a knife that's capable of firing bullets."<sup>36</sup> Gallagher was aware of the so-called "21-foot rule" before October 20, 2014, but had never heard of a knife capable of firing bullets. Gallagher OIG Tr. 82:15-20, 83:10-12. March's interview of Van Dyke occurred before Van Dyke was interviewed by IPRA.

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<sup>35</sup> As of October 20, 2014, McNaughton was Deputy Chief of Patrol in CPD's Area Central.

<sup>36</sup> The March 16, 2015 CSR explains the so-called "21-foot rule" as the principle that "an assailant armed with a knife was considered a deadly threat, if within 21 feet, because it was possible for such an assailant to close that distance and attack with the knife before a defensive shot could be fired from a handgun." OIG 15-0564 003074. On April 29, 2016, OIG spoke with CPD Deputy Chief Director of Training Keith Calloway. Calloway is familiar with the so-called "21-foot rule." Calloway characterized the 21-foot rule as "junk science" as the theory behind it has never been scientifically proven, and stated that it has never been part of CPD's training process. See OIG Investigative Report of Call with Keith Calloway.

### 3. CPD's Investigation

Within two or three days of the McDonald shooting, Gallagher learned that Roy was presenting video footage of the shooting at a meeting of high-level CPD personnel. After the meeting, Roy told Gallagher that “there were no issues with it, and the people saw the video, and nobody, all the way up to the superintendent, because any of those people that saw the video have a duty and obligation to pull a CR number if they saw any issues with it.”<sup>37</sup> Gallagher OIG Tr. 114:7-12.

Approximately ten days after Van Dyke shot McDonald, Gallagher learned that Van Dyke had been stripped of his police powers.<sup>38</sup> Gallagher contacted IPRA to ask why they had recommended this action and whether they had any additional evidence relevant to the investigation. He eventually spoke with IPRA Chief Administrator Scott Ando, and was told that he would have to contact the office of CPD’s Superintendent. Gallagher contacted his chain of command and was told that the recommendation to “strip” Van Dyke had not come from anyone in CPD, but had come from IPRA.

At some point after Van Dyke was stripped of his police powers, there was a second upper-level management meeting which Valdez attended to present on the McDonald shooting. After that meeting, Valdez told Gallagher that “no one had any issues with it.” Gallagher OIG Tr. 115:9-10.

Approximately one month later, Gallagher learned that officers who had been on the scene of the McDonald shooting were being called to testify before a grand jury at the Cook County Criminal Courts building at 26th Street and California Avenue. At that point, Gallagher considered his investigation of the shooting “on hold” until “someone from the upper echelon explained specifically what is going on at 26th Street.” Gallagher OIG Tr. 98:11-13.

On March 8, 2015, Roy sent an email to Gallagher, Wojcik, Valdez, March, and possibly Detective Richard Hagen, who was also under Gallagher’s command, to set up a meeting to “go over this whole case.” Gallagher OIG Tr. 98:22. Those who had received the email met, and, the following day, Valdez and Roy met with attorneys from the City of Chicago Law Department. After that meeting, Gallagher and the others were ordered to finalize the reports for the case, because “it sound[ed] like they [were] going to settle this case.” Gallagher OIG Tr. 99:19-20. A deadline of two days was initially set and then extended through the following weekend. Gallagher stated the order to finish the reports would have come from Roy. Gallagher considered closing the reports on the case at that point to be “abnormal,” because the results of the toxicology tests on McDonald had not yet been reported. Gallagher OIG Tr. 127:8. Therefore, he believed, “the investigation wasn’t complete.” Gallagher OIG Tr. 127:5.

March was responsible for drafting the CSR on the case. Generally, on a police-involved shooting case, the assigned detective would draft the report, Gallagher would review it and return

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<sup>37</sup> A CR number is a tracking number assigned to a CPD disciplinary investigation. See CPD General Order G08-01.

<sup>38</sup> Van Dyke was relieved of his police powers on October 29, 2014.

it to the detective with any comments, and then the detective would have the report reviewed by the lieutenant. Gallagher denied drafting any section of the CSR prepared in the aftermath of the McDonald shooting. After March prepared the CSR, Gallagher recalled making grammatical corrections, but did not recall making any substantive changes. At some point, Gallagher learned that Wojcik was planning to draft the conclusion paragraph of the CSR.

#### 4. The March 16, 2015 CSR

Gallagher reviewed the allegations against him as set out in the Notification of Allegations served upon him by OIG, as relating to the March 16, 2016 CSR, which is labelled as the “report of” March, Gallagher, and Wojcik. He responded, in relevant part, to the allegations as follows.

- “[I]t is alleged that the case supplementary report . . . falsely stated that the in-car camera videos recovered from Vehicles 813R and 845R were consistent with the accounts of all the witnesses to the McDonald shooting.”

Gallagher responded, stating, “I did not believe that that was part of the draft copy that I reviewed when March typed it and I gave mine back. I don’t recall specifically if that sentence was in there. . . . It is possible, but I don’t recall.” Gallagher OIG Tr. 149:3-11. Gallagher later said that, if that statement had been included in the draft of the report which he reviewed, “would have double checked and made sure that everything was consistent.” Gallagher OIG Tr. 157:19-21. Nonetheless, when asked whether he believed it to be an accurate statement that the 813R and 845R videos were consistent with all witness accounts, Gallagher answered that “in general they are consistent.” Gallagher OIG Tr. 149:18.

Gallagher then reviewed a number of specific statements attributed to witnesses in the CSR, and OIG investigators asked whether he believed the dashcam videos to be consistent with those statements. Gallagher affirmed his belief that the video is consistent with the statements that “McDonald ignored Van Dyke’s verbal direction to drop the knife and continued to advance toward Van Dyke” and that “McDonald raised the knife across his chest and over his shoulder pointing the knife at Van Dyke.” Gallagher OIG Tr. 150:7-19.

Gallagher reviewed the statement that “[i]n defense of his life, Van Dyke backpedaled and fired his handgun at McDonald to stop the attack.” Gallagher OIG Tr. 150:24-151:2. When asked whether that statement was consistent with the 813R dashcam video, he answered, “Well, the perspective of that is the camera moves out of the – you don’t see Van Dyke, so you don’t see all of Van Dyke’s movements, so depending on the perspective of 813 Robert, it doesn’t appear that you see him backpedal on 813 Robert, but then if you look at the Dunkin’ Donuts video, he does either backpedal or shuffle, so it is consistent.” Gallagher OIG Tr. 151:4-11. Gallagher later said that he “didn’t have the opportunity to specifically ask [Van Dyke] what his definition of back pedal was,” and acknowledged that, from the Dunkin Donuts video, it appears that Van Dyke could have been moving either south or southeast. Gallagher OIG Tr. 152:8-15.

Gallagher reviewed the statement attributed to Van Dyke that “McDonald fell to the ground but continued to move and continued to grasp the knife, refusing to let go of it. Van Dyke continued

to fire his weapon at McDonald as McDonald was on the ground, as McDonald appeared to be attempting to get back up all the while continuing to point the knife at Van Dyke.” Gallagher OIG Tr. 152:17-23. When asked whether that statement was consistent with the 813R dashcam video, Gallagher initially answered, “Yeah, there is nothing to refute that perception.” Gallagher OIG Tr. 153:2-3. He went on to say, “[p]erception is reality in these cases. If that’s what an officer perceives and that’s what he relays, there is nothing in there to refute. There is nothing in the video to refute that.” Gallagher OIG Tr. 153:5-9. Gallagher also affirmed his belief that the 813R dashcam video was consistent with the statements attributed to Walsh, that “McDonald ignored the verbal direction given by both Walsh and Van Dyke and continued to advance toward the officers,” and that McDonald swung the knife toward the officers in an aggressive manner. Gallagher OIG Tr. 154:18-155:7. Further, Gallagher confirmed his belief that videos of the shooting were consistent with the statements that “Officer Walsh also backed up attempting to maintain a safe distance between himself and McDonald,” and that “Van Dyke continued firing his weapon at McDonald as McDonald continued moving on the ground attempting to get up while still armed with the knife.” Gallagher OIG Tr. 155:12-156:2.

Gallagher reviewed the CSR statement attributed to Officer Fontaine that “Fontaine heard the officers repeatedly order McDonald to drop the knife. McDonald ignored the verbal direction and instead raised his right arm toward Officer Van Dyke as if attacking Van Dyke.” Gallagher OIG Tr. 156:14-18. When asked whether that statement was consistent with videos of the shooting, Gallagher answered, “Yeah, that’s her perception and that there is nothing to refute that. That’s consistent with the video.” Gallagher OIG Tr. 156:21-22.

Gallagher was presented with the statement in the conclusion of the CSR, that McDonald “initiated an attack on Officers Van Dyke and Walsh.” Gallagher OIG Tr. 169:9-10. When asked for the basis for that statement, he said, “[McDonald] provoked this incident. If he would have turned around and ran [sic] the other way, there would not have been a shooting. For whatever reason, and obviously we can’t ask him, but he chose that route for whatever reason, and then he chooses to turn towards [Van Dyke and Walsh] again . . .” Gallagher OIG Tr. 169:11-17.

##### 5. Gallagher’s Major Incident Notification Detail

Gallagher described this report as an “internal document that basically we do after every shooting or after every major incident.” Gallagher OIG Tr. 190:5-7. He explained that the person responsible for preparing the document is to “get it out within hours of the incident and you type a short synopsis of the facts known at the time.” Gallagher OIG Tr. 190:8-10. Gallagher prepared the MIN relating to the McDonald shooting either during the night of October 20, 2014, or during the early morning hours of October 21, 2014. When he prepared the document, he had already seen video footage of the McDonald shooting. After Gallagher drafted it, McNaughton reviewed and approved the report.

Gallagher reviewed the allegation against him as set out in the Notification of Allegations served upon him by OIG, regarding the MIN. He responded, in relevant part, to the allegation as follows.

- “It is alleged that you falsely stated in a Major Incident Notification Detail for Incident No. 73204 regarding RD No. HX475653 that McDonald continued to approach officers Walsh and Van Dyke, and that Van Dyke fearing for his life discharged his weapon.”

Gallagher called that allegation “completely false.” Gallagher OIG Tr. 193:24. When asked whether he stood by the factual accuracy of the statement that McDonald “continued to approach Officers Walsh and Van Dyke,” Gallagher said, “[y]es.” Gallagher OIG Tr. 194:2-6. Gallagher went on to explain that, in his view, McDonald had taken “between 10 and 12 steps” in the direction of Van Dyke and Walsh before Van Dyke shot him. Gallagher OIG Tr. 194:17.

## V. ANALYSIS

OIG’s investigation established that Gallagher made false statements and misleading characterizations in CPD reports related to the McDonald shooting. These false statements each served a similar purpose: to materially exaggerate the threat posed by McDonald. In addition, Gallagher’s failure to ensure that Detective March conducted a complete, thorough, properly documented, and professional investigation constitutes incompetence in the performance of his duties.

Gallagher’s actions, individually and collectively, constitute violations of CPD Rules. Each of Gallagher’s false statements, including those in the CSR for which he is listed as a reporting officer, constitutes a violation of Rule 14 (making a false report, written or oral). His false statements and failure to perform and supervise a thoroughly and properly documented investigation also constitute violations of Rule 2 (engaging in any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department), and Rule 3 (failing to promote the Department’s efforts to implement its policy and accomplish its goals). A supervisory member who has made, reviewed, or approved false statements in an official investigation has irrevocably tainted not only his credibility, but also the credibility of CPD—and also fails to promote CPD’s goal of employing officers with personal integrity and professional devotion to law enforcement. Gallagher’s failure to ensure that the investigation conducted under his command proceeded in an objective and thorough manner further constituted a violation of Rule 11 (incompetency in the performance of a duty). Accordingly, OIG recommends that CPD discharge Gallagher.

### A. **Gallagher’s False Statements in the March 16, 2015 Case Supplementary Report**

The March 16, 2015 301 CSR lists Gallagher as a reporting officer and was submitted by March, who was under Gallagher’s command as the supervising sergeant. In his OIG interview, Gallagher admitted to having reviewed the CSR. Both March and Roy, in their OIG interviews, make clear that Gallagher was directly involved in the creation of the report. Gallagher is responsible for the content of the CSR; not only was it submitted by a detective under Gallagher’s supervision and command, it was submitted as the report of Gallagher, himself. Any

attenuation from the actual creation of the report suggested by Gallagher's supervisory role is belied by the fact that he is listed as an author of the document.

That report includes two false statements. First, it falsely states that the "recovered in-car camera video from Beats 845R and 813R was viewed and found to be consistent with the accounts of all of the witnesses." OIG 15-0564 003075. Second, the CSR contains the false statement that "McDonald initiated the imminent use of force likely to cause death or serious injury when he initiated an attack on Officers Jason Van Dyke and Joseph Walsh." OIG 15-0564 003078.

With respect to the first false statement, that the dashcam videos are consistent with the witness statements, Gallagher asserted that specific statement may not have been in the draft he reviewed. Regardless, Gallagher was directly responsible for ensuring the accuracy of the statement and the report as a whole. March drafted the CSR under Gallagher's direct supervision and command, and the CSR was issued as the "report of" three individuals, Gallagher among them. Even crediting Gallagher's suggestion that he may not have seen that particular sentence, if Gallagher permitted the report to be finalized and issued in his name without knowing what it contained, he was at a basic level incompetent in his duties. Further, in his OIG interview, Gallagher affirmed his belief that the statement at issue was accurate.

OIG investigators presented Gallagher with several individual statements attributed to witnesses in the CSR and asked whether he affirmed the statement that they were consistent with dashcam video footage of the McDonald shooting. In each of the following instances, Gallagher affirmed the conclusion that these statements attributed to witnesses, were consistent with the video footage:

- "McDonald ignored Van Dyke's verbal direction to drop the knife and continued to advance toward Van Dyke." Gallagher OIG Tr. 150:7-9.
- "McDonald raised the knife across his chest and over his shoulder pointing his knife at Van Dyke." Gallagher OIG Tr. 150:17-19.
- "McDonald fell to the ground but continued to move and continued to grasp the knife, refusing to let go of it. Van Dyke continued to fire his weapon at McDonald as McDonald was on the ground, as McDonald appeared to be attempting to get back up all the while continuing to point the knife at Van Dyke." Gallagher OIG Tr. 152:17-23.
- "McDonald ignored the verbal direction given by both Walsh and Van Dyke and continued to advance toward the officers. When McDonald got to within 12 to 15 feet of the officers he swung the knife toward the officers in an aggressive manner." Gallagher OIG Tr. 154:18-155:7.
- "Officer Walsh also backed up attempting to maintain a safe distance between himself and McDonald." Gallagher OIG Tr. 155:12-14.

- “Van Dyke continued firing his weapon at McDonald as McDonald continued moving on the ground attempting to get up while still armed with the knife.” Gallagher OIG Tr. 155:20-23.
- “Fontaine heard the officers repeatedly order McDonald to drop the knife. McDonald ignored the verbal direction and instead raised his right arm toward Officer Van Dyke as if attacking Van Dyke.” Gallagher OIG Tr. 156:14-18.

In fact, each of these statements is refuted by the dashcam video footage of the shooting. The video footage of the shooting shows that, before Van Dyke shot McDonald, McDonald was walking away from Van Dyke and Walsh and that Walsh and Van Dyke were in fact moving toward McDonald. It shows that McDonald did not raise the knife he was holding over his shoulder, did not swing the knife toward the officers in an “aggressive” manner, nor did he raise his arm toward Van Dyke as if attacking Van Dyke.<sup>39</sup> Further, the video makes clear that, upon being shot and falling to the street, McDonald never moved his legs or lower body. The video only shows McDonald’s upper body making small, intermittent movements as what appear to be puffs of smoke rise from his body. Those small movements are demonstrably not suggestive of a person trying to get up or get to his feet.

When presented with the statement that, “[i]n defense of his life, Van Dyke backpedaled and fired his handgun at McDonald to stop the attack,” Gallagher acknowledged that the recovered dashcam video does not show this; it cannot, therefore, be consistent with the statement. He initially argued that Van Dyke’s “backpedaling” can be seen on the Dunkin’ Donuts security footage, but finally stated that even that video does not clearly show in which direction Van Dyke was moving.

Gallagher’s second false statement in the CSR, that McDonald “initiated the imminent use of force likely to cause death or serious injury when he initiated an attack on Officers Jason Van Dyke and Joseph Walsh,” is similarly belied by the video evidence. As summarized, *supra*, the video footage shows McDonald moving away from Van Dyke and Walsh, and does not show him making any movement toward them which could appropriately be characterized as “initiat[ing] an attack.” Notably, during the entire period of time for which Van Dyke and Walsh were outside of their car, McDonald was moving away from them.

## B. Gallagher’s False Statement in the Major Incident Notification Detail

In Gallagher’s MIN regarding the McDonald shooting, he reported that McDonald “refused all verbal commands and continued to approach the officers while still armed with his knife.” OIG 15-0564 003010. As described above, video footage of the moments leading up to the shooting make clear that McDonald was not “approaching” Van Dyke and Walsh; rather, McDonald was walking away from the officers as they moved toward him. This false characterization of McDonald’s actions serves to exaggerate the threat he posed to Van Dyke and Walsh.

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<sup>39</sup> In the March 16, 2016 CSR, this statement is attributed to Officer Fontaine. In her OIG interview, Officer Fontaine denied making this statement, and she herself declined to stand by it as accurate. Fontaine 3/16/2016 OIG Tr. 34:23-35:1; 116:18.

### C. Gallagher's Incompetence in the Performance of Duty

Finally, Gallagher's failure to ensure that Detective March conducted a complete, thorough, properly documented, and professional investigation constitutes incompetence in the performance of his duties. March included false material statements and conclusions in the CSR, for which Gallagher is responsible both as March's supervising sergeant and as a named author of the report.

As March's supervisor, Gallagher had an obligation to ensure that March completed a professional and accurate investigation and documented it appropriately. By CPD's Rules and Regulations, Gallagher was responsible for the performance of March as his subordinate, and remained answerable and accountable for the failures and inadequacies of March's performance. As a supervisory member of CPD, Gallagher was under a heightened obligation to further the policy and goals of CPD by ensuring the completion of a truthful, objective investigation.

### VI. RECOMMENDATION

The false statements for which Gallagher is responsible, both directly and indirectly, raise significant concerns regarding his credibility and ability to perform his duties as a sworn officer and supervisory member. As a sworn officer and supervisory member, Gallagher's reports are relied upon in criminal legal proceedings and his credibility is therefore critical to his position. An officer who has made false statements in an official investigation has irrevocably tainted his credibility and has wholly disqualified himself from effectively executing core police functions. Based on this conduct he may be the subject of cross-examination in any contested proceedings in which he may appear as a witness, *see FED. R. EVID. 608(b)* ("Specific instances of conduct"), and his conduct and the findings resulting from this investigation would further qualify as impeachment material that should, in principle, be disclosed in any contested proceeding involving the official records or testimony Gallagher generates. *See Giglio v. United States*, 405 U.S. 150 (1972) (requiring disclosure in criminal case of information impeaching of government witness's credibility). Illinois courts have repeatedly noted that "as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness" and have found intentional false or misleading statements by police officers to be sufficient cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011) (quoting *Sindermann v. Civil Service Comm'n*, 275 Ill. App. 3d 917, 928 (2nd Dist. 1995)). Further, in his position as a supervisor, Gallagher had an elevated responsibility to promote CPD's goals and implement its policies; instead, he failed to supervise a complete, thorough, properly documented, and professional investigation in the aftermath of the McDonald shooting, and in so doing he brought discredit upon CPD and was incompetent in the performance of his duties.

OIG therefore recommends that CPD discharge Gallagher and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

## **VII. CPD RULE VIOLATIONS**

**Rule 2** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

**Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

**Rule 11** Incompetency or inefficiency in the performance of duty.

**Rule 14** Making a false report, written or oral.

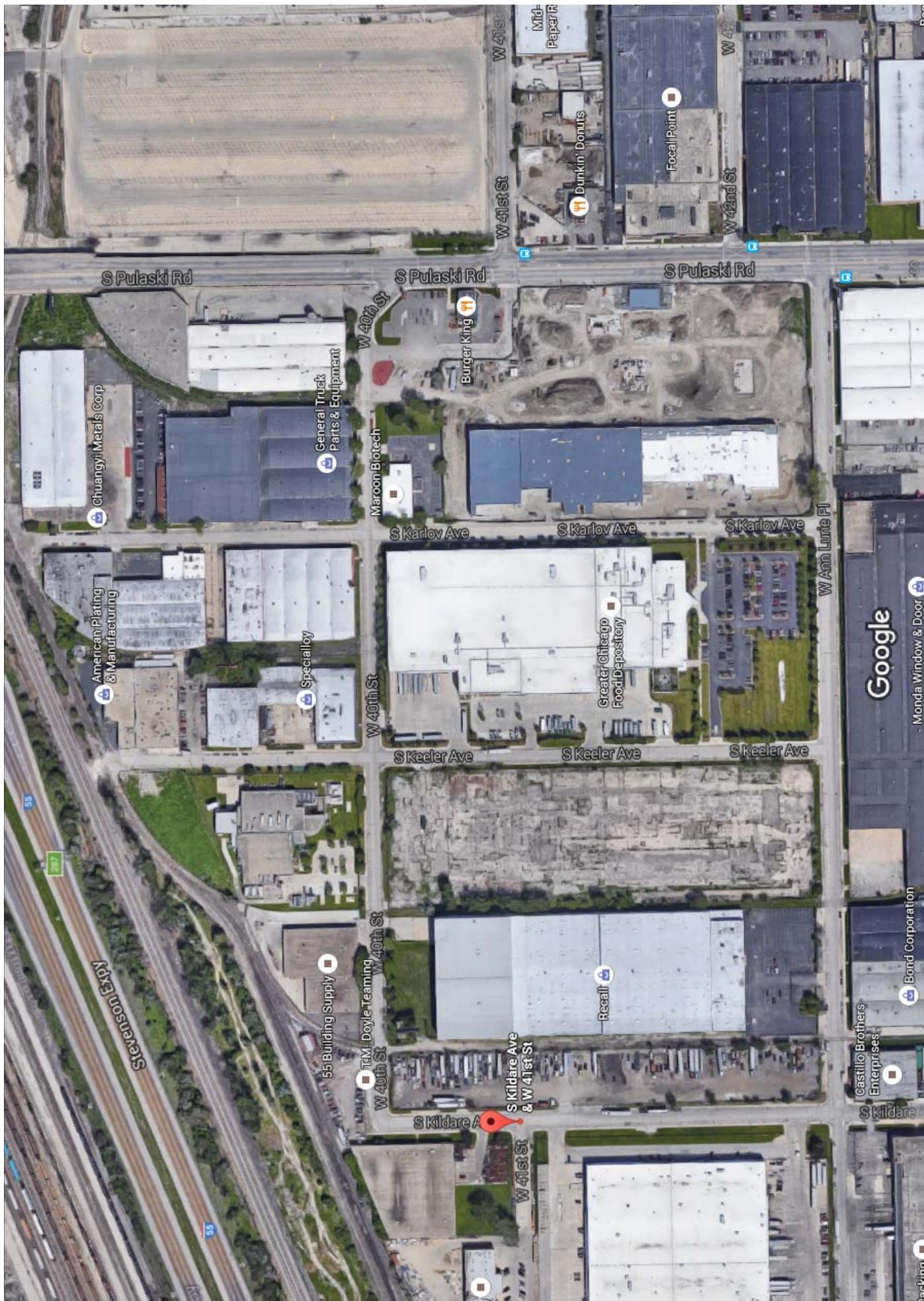
# **Appendix A**

S Kildare Ave & W 41st St - Google Maps

S Pulaski Rd

S Pulaski Rd

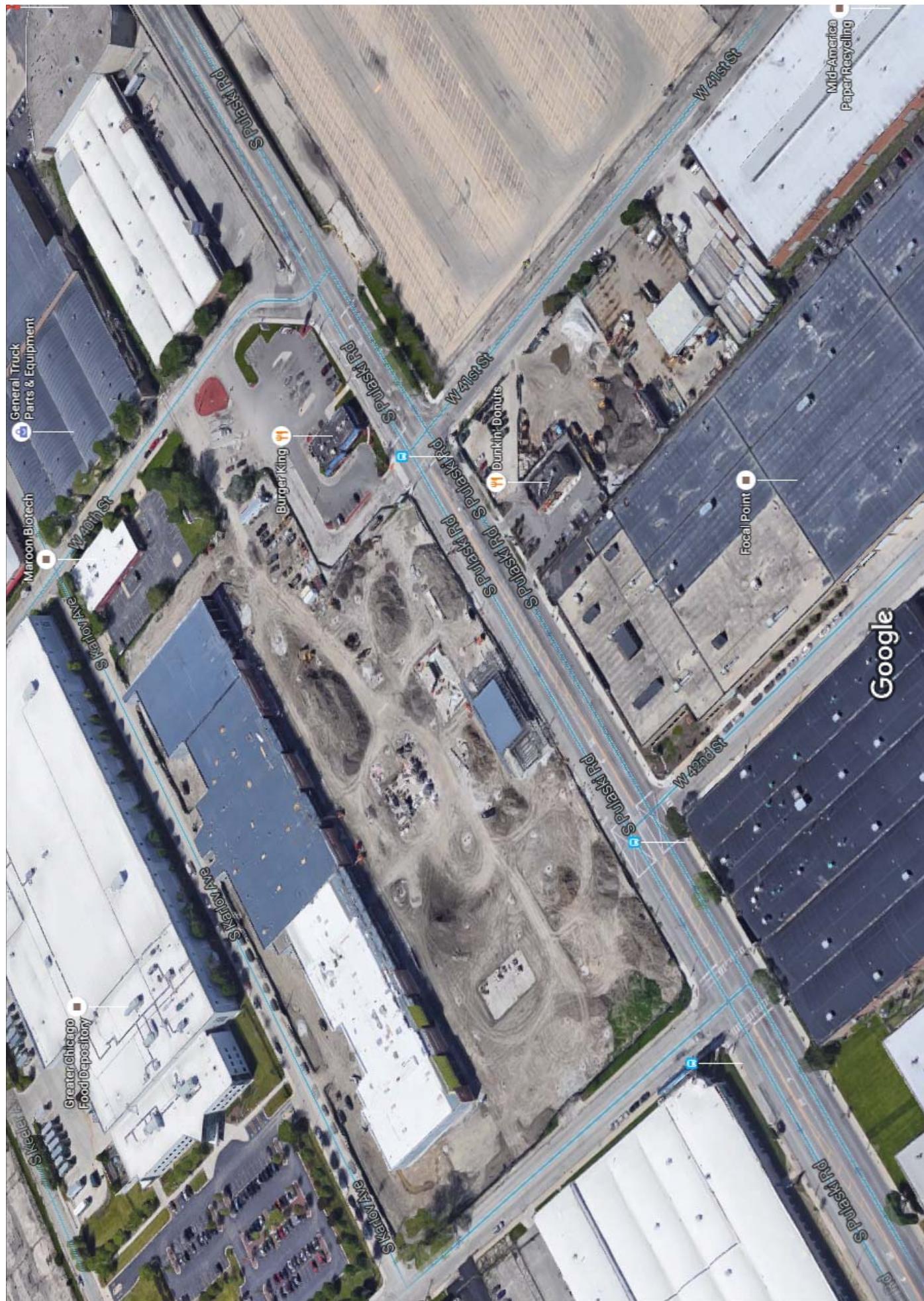
**S Pulaski Rd**



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<https://www.google.com/maps/place/S+Kil+dare+Ave+&+W+41st+St,+Chicago,+IL+60632/@41.8186918,-87.7273251,672m/data=!3m1!1e3!4m2!3m1!1s0x880e3229fb09b15!0x5d496ce5b4e391>



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